

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
vs.)
Kimberly Starchvill) Docket No. 1676
Deputy Sheriff)
Star # 10944)

DECISION

This matter coming to be heard pursuant to notice before Kim R. Widup, Board Member, on January 19, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Kimberly Starchvill, hereinafter "Respondent," was appointed a Deputy Sheriff on October 13, 1998. Respondent's position as a Deputy Sheriff involves duties and responsibilities to the public; and

Each member of the Cook County Sheriff's Merit Board, hereinafter "Board", has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and

The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

The Respondent was personally served with a copy of the Complaint and notice of hearing and through her counsel agreed to the provisions of a Last Chance Agreement (LCA) in which she agreed to return to duty and not be absent from duty in accordance with the LCA. If the Respondent were found in violation of the LCA the Sheriff retained the right to amend and reinstate the initial complaint. The LCA also provided that if the Respondent violated the provisions of the LCA her rights to a contested trial would be waived and, if found to be in violation of the LCA, the Respondent's case would be resolved through a prove-up hearing instead of a contested trial. The Respondent agreed to the LCA and was returned to duty. On July 24, 2015, the Respondent was found to be in violation of the LCA and the complaint was reinstated.

The Board has heard the evidence presented by the Sheriff and has evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background

On October 13, 1998, the Respondent was appointed a Deputy Sheriff for the Cook County Sheriffs Office (CCSO). On February 24, 1998, the Respondent was assigned to the Daley Center Courts, 50 West Washington, Chicago, IL.

The Respondent was absent from scheduled work shifts and the absences were unauthorized for a total of nineteen (19) days between June 1, 2010, and September 20, 2010, as set forth below:

- The Respondent was Absent/No Sick Time (NST) on June 1, 14, 17, 21-23, 25, 28, 2010, and July 6-7, 9, 12, 15-16, 19-21, 26, 2010.
- The Respondent was Absent Late Call (ALC) on September 20, 2010.

The Respondent was absent from scheduled work shifts and the absences were unauthorized for an additional 92 days between June 29, 2012, and November 5, 2012, as set forth below:

- The Respondent was Absent/No Sick Time (NST) on June 29, 2012; July 2-6, 9-13, 16, 20, 24-27, 30-31, 2012; August 1-3, 6-10, 13-17, 20-24, 27-31, 2012; September 4-7, 10-14, 17-21, 24-28, 2012; October 1-5, 9, 10-12, 15-19, 22-26, 29, 30-31, 2012; and November 1-2, 5, 2012.
- The Respondent was Absent Late Call (ALC) on July 17-19, 23, 2012.
- The Respondent was Absent/No Holiday Time (NHT) on September 3, 2012, and October 8, 2012.

The Respondent was absent from scheduled work shifts and the absences were unauthorized for an additional seven days (total of 17 hours) between March 14, 2013, and October 30, 2013, as set forth below:

- The Respondent was Absent NST on March 14, 2013 (1 hour) and March 15, 2013 (1 hour).
- The Respondent was Tardy on March 25, 2013 (4 hours); August 28, 2013 (1 hour); August 29, 2013 (2 hours); and October 30, 2013 (4 hours).
- The Respondent was Absent/No Personal Time (NPT) on July 26, 2013 (4 hours).

On March 11, 2014, the Respondent, the Teamsters Local 700 (Union), and the Sheriff of Cook County (Employer) entered into a Last Chance Agreement (LCA).

The terms and conditions of the LCA set forth that if the Respondent would fail to meet the terms of the LCA, the Employer would have the right to reinstate and amend the Complaint under Merit Board Docket No. 1676 to show additional violations against the Respondent if:

- The Respondent incurs one single hour or more of Unauthorized Absence activity within 365 days from the effective date of this Agreement; or
- The Respondent falls into a pattern of sick time abuse. A pattern of sick time abuse will be established if the Respondent:
 - Uses three or more sick days in conjunction with her Regular Day Off (RDO) during a rolling 120-day period;

The terms and conditions of the LCA set forth that in the event the Employer determined the Respondent incurred an Unauthorized Absence or fell into a pattern of sick time abuse, the Respondent and the Union would retain the right to file a grievance over whether the Respondent actually did incur an Unauthorized Absence or fell into a pattern of sick time abuse. Further, the LCA set forth that the Third Step Hearing Officer would make the final determination and the grievance would not be subject to arbitration.

The terms and conditions of the LCA set forth that the Respondent agreed to waive her right to challenge the complaint if reinstated.

On September 5, 2014, November 7, 2014, and November 17, 2014, the Respondent fell into a pattern of sick time abuse by using three sick days in conjunction with her RDO during a rolling 120-day period, in violation of the LCA.

On February 11, 2015, the Respondent was notified of the September 5, 2014, November 7, 2014, and November 17, 2014 sick days she took in conjunction with her RDO during a rolling 120-day period, by an Unauthorized Absence Notification Form.

The Respondent filed a grievance for the September 5, 2014, November 7, 2014, and November 17, 2014, sick days she took in conjunction with her RDO during a rolling 120-day period. On April 16, 2015, the Respondent's grievance was denied by a 3rd Step Hearing Officer and it was determined that the three sick days the Respondent used in conjunction with her RDO established that the Respondent fell into a pattern of sick time abuse in violation of the LCA.

Issues Presented

The Respondent was charged based on her actions detailed above with violations of the Rules and Regulations and General Orders of the Cook County Sheriff Court Services Department, specifically:

General Order 3101.2 Attendance and the Use of Benefit Time, in its entirety, including, but not limited to, the following subparts:

II. POLICY

CCSD members must report for duty on the days that they are scheduled to work, and arrive ready to work at the time that they are scheduled to start work. All requests for the use of Benefit Time must be on the Timekeeping/Attendance form. Approval or denial of use of Benefit Time will be based on the needs of the requesting member's Facility/Unit.

V. PROCEDURES FOR USE OF BENEFIT TIME

A. Call in – Medical Day

1. When a CCSD member is unable to report for his/her tour of duty, he/she will notify a supervisor at his/her facility/unit of assignment or detail at least one (1) hour prior to his/her scheduled reporting time. In facilities/units not staffed until the member's starting time, he/she will notify a supervisor within fifteen (15) minutes after his/her scheduled reporting time.
2. When calling in, the member will give the reason for the absence and any other information requested by the supervisor.
3. The CCSD member must telephone his/her facility/unit of assignment or detail each day for use of medical time except as provided for in paragraph 5 of this section.
4. Any member who fails to notify his/her facility/unit of assignment or detail will be considered absent without permission.
5. A CCSD member with a disabling condition and/or who is hospitalized may satisfy the daily notification requirement with his/her physician's written statement. This statement must contain the nature of the employee's condition, the reason why this condition prohibits work and the expected duration of absence. The statement will be adequate for use of accumulated medical days for up to one (1) month. Additional statements may be submitted monthly, or more frequently as the facility/unit head requires.

General Order 3401.1 Rules of Conduct, in its entirety, including, but not limited to, the following subparts:

V. RESPONSIBILITY

It is the responsibility of every member of the C.S.D. to conform to the rules of conduct.

VI. RULES AND REGULATIONS FOR ALL SWORN OFFICERS AND CIVILIAN MEMBERS

C. Conduct Towards Superiors, Associates and Subordinates

1. Members will promptly obey any lawful orders of a superior either written or oral. This will include orders relayed from a superior, by a person of the same or lesser rank or by a telecommunication via radio.

U. Tour of Duty: Attendance, Availability and Reporting

1. Members will report for duty at the time and place required or report their inability to do so by notifying their supervisor or the appropriate office one hour prior to the beginning of their tour of duty. No member shall be absent without leave. Absent without leave shall mean either a failure to report for duty or leaving their

- assigned duty post during a tour of duty without being properly relieved, except when authorized by proper authority. Members shall be punctual in reporting for duty; habitual failure to report promptly shall be deemed neglect of duty. Members will be physically and mentally fit to perform their duties. They will be properly equipped and cognizant of information required for the proper performance of duty so that they may immediately assume their duties. Judicial subpoenas will constitute an order to report for duty under this section.
2. Any member who has failed to report to work or receive approval for an absence for a period of five consecutive days (or as provided by the relevant Collective Bargaining Agreement) and has not notified his/her immediate supervisor, or the next available superior in the chain of command (whichever is appropriate) during that time period of the reason for the absence, or fails to return to work from an approved leave of absence according to the terms thereof without the prior approval of the Chief Deputy Sheriff, absent exigent circumstances, is deemed to have abandoned his/her job and forfeits his/her employment with the CCSD.

Sheriffs Order 11.4.1.1 Unauthorized Absence, in its entirety, including, but not limited to, the following subparts:

II. POLICY

It is the policy of the Cook County Sheriff's Office (CCSO) to prohibit CCSO employees from incurring Unauthorized Absences. Unauthorized Absences exacerbate absenteeism problems and strain the operations and employees of the CCSO. CCSO employees receive benefit time and have a variety of leave options available to cover the need for short-term and long-term absences. Therefore, even if an employee is legitimately ill or has some other reasonable excuse for being absent, the employee must obtain an appropriate Authorized Status(es) prior to or immediately after the need for the absence(s).

VII. Disciplinary Procedures for Employees with Unauthorized Absence(s)

- A. Disciplinary procedure for employees without a Rolling Calendar clause in their applicable CBA will be progressive and will be in accordance with the applicable CBA.

Additionally, the Respondent's actions violated the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

Cook County Sheriff's Department Merit Board Rules and Regulations, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B:

No Police Officer of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections, or any Deputy Sheriff of the Cook County Sheriff's Court Services Department shall:

3. Violate any of the General Orders, special orders, directives, or rules and regulations of the Cook County Sheriff's Office.

Findings of Fact

This matter was called for a "prove-up" hearing instead of a trial on January 19, 2016. The Respondent had been previously served with a copy of the Complaint and notice of hearing and through her counsel agreed to the provisions of a Last Chance Agreement (LCA) dated March 11, 2014 (erroneously described in the trial transcript as being March 11, 2004, by the States Attorney), in which she agreed to return to duty and not be absent from duty in accordance with the LCA. The Respondent agreed through counsel that if she were found in violation of the LCA the Sheriff retained the right to amend and reinstate the initial complaint. The LCA further provided that if the Respondent violated the provisions of the LCA her rights to a contested trial would be waived and - if found to be in violation of the LCA - the Respondent's case would be resolved through a prove-up hearing instead of a contested trial. The Respondent agreed to the LCA and was returned to duty. On July 24, 2015, the Respondent was found to be in violation of the LCA and the complaint was reinstated. The Respondent appeared before the Board with counsel to observe the proceedings of the prove-up hearing against her detailing the charges contained in the Complaint (the Respondent, through her counsel, agreed in advance that she would have no role in or present any defense as delineated in the LCA at the prove-up hearing). At the hearing, with a court reporter being present, all witnesses were sworn under oath and documents were introduced by the Sheriff that were received into evidence. The Respondent did not testify.

The first witness called by the Sheriff was [REDACTED] Investigator, OPR, who testified that she was the investigator assigned to investigate the matter involving the Respondent. She testified that she is an investigator with OPR and had been with OPR since 2006. She started as a correctional officer for the Cook Department of Corrections in June of 1995.

Investigator [REDACTED] identified her investigative file regarding the Respondent and it was moved into evidence (Exhibit 1). She testified that her file showed there were three separate complaint registers against the Respondent: 2010-0789, 2010-0833, and 2011-0611. Investigator [REDACTED] testified that upon initiating her investigation she pulled the Respondent's time cards and determined that the Respondent missed approximately 76 days of work without authorization between 2010 and 2012. Investigator [REDACTED] testified that she confirmed the Respondent was absent from duty in June of 2010, on June 1, 14, 17, 21-23, 25, and 28. She said the Respondent was absent with no sick time in July 2010, on July 2, 6-7, 9, 12, 15-16, 19-21, and 26. She was aware the Respondent was absent late call on September 20, 2012, but another investigator addressed that part of the Respondent's absences. Investigator [REDACTED] identified copies of General Order 3101.2 (Exhibit 2), General Order 3401.1 (Exhibit 3), and Sheriff's Order 11.4.1.0 (Exhibit 4). Investigator [REDACTED] said her investigation showed the Respondent had violated the provisions of these orders. All were moved into evidence.

[REDACTED] Deputy Director of Human Resources (HR), CCSD, testified that she had been the Deputy Director of HR since March of 2013, before that she was Personnel Manager from 2002 to 2013, and before then was in personnel from 1989. Director [REDACTED] had oversight over CCSD employee's time cards and maintained custody of them in HR. She was the steward for the Respondent's time cards (Exhibit 5). Director [REDACTED] testified that the

Respondent was in an unauthorized absence status for approximately 46 days in 2010 and another 40-46 days in 2012.

An affidavit from [REDACTED] regarding the Respondent's grievance to the Union for combining sick days with a weekend introduced (Exhibit 6) as was the amended complaint against the Respondent, which included copies of the Last Chance Agreement and other documents (Exhibit 7). Finally, a copy of the Article X of the Cook County Sheriff's Merit Board Rules and Regulations regarding employee conduct was introduced for the record (Exhibit 8).

Decision

The Board finds by a preponderance of the evidence through the testimony of the witnesses and the supporting evidence that the Respondent was absent from duty without authorization on multiple occasions. The Respondent was provided with the opportunity to return to duty under the provisions of a Last Chance Agreement (LCA) and the initial charges against her were suspended under the provisions of her entering into the LCA. Even after executing a LCA, the Respondent continued to be absent without authorization. The Respondent was put on notice that she was in violation of the LCA. She appealed and her appeal was denied. She was notified that she had violated the LCA and, as per her agreement, the initial charges of being absent without authorization were reinstated as were the new charges of being absent without authorization. The LCA further provided that the Respondent waived her right to a trial or further hearing and that she would be removed from employment after the conducting of a prove-up hearing. The hearing was held and the Respondent was found by a preponderance of the evidence to be in violation of the LCA and absent from duty without authorization.

Conclusions of Law

Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence in the record, The Board finds that Respondent Kimberly Starchvill, Star #10944, did violate General Order 3102.2, Sections II and V, A1-5; General Order 3401.1, Sections V and VI, C1 and U1-2; Sheriffs Order 11.4.1.1, Sections II and VII A; and Article X, Paragraph B-3 of the Rules of the Cook County Sheriff's Merit Board.

Wherefore, based on the foregoing, it is hereby ordered that the Respondent Kimberly Starchvill, be and is separated from employment with the Cook County Sheriff's Office effective July 24, 2015.

Kimberly Starchvill Dep #1676

[REDACTED]
James P. Nally, Chairman

[REDACTED]
Byron Brazier, Vice Chairman

[REDACTED]
Brian J. Riordan, Board Member

[REDACTED]
John V. Dalicandro, Secretary

[REDACTED]
Gray Mateo-Harris, Board Member

[REDACTED]
Jennifer E. Bate, Board Member

[REDACTED]
Kim R. Widup, Board Member

[REDACTED]
Patrick Brady, Board Member

[REDACTED]
Vincent T. Winters, Board Member

Dated: April 28, 2016